

BellSouth Telecommunications, Inc.

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November 6, 2000

VIA HAND DELIVERY

David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *Generic Docket to Establish UNE Prices for Line Sharing per FCC 99-355 and Riser Cable and Terminating Wire as Ordered in TRA Docket No. 98-00123*
Docket No. 00-00544

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of BellSouth's Response to the Data Coalition's Comments of November 1, 2000. Copies of the enclosed are being provided to counsel of record for all parties.

Very truly yours,

Guy M. Hicks

GMH:ch
Enclosure

POSTED
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BEFORE THE TENNESSEE REGULATORY AUTHORITY

Nashville, Tennessee

In Re: *Generic Docket to Establish UNE Prices for Line Sharing per FCC 99-355 and Riser Cable and Terminating Wire as Ordered in TRA Docket No. 98-00123*

Docket No. 00-00544

2000 OCT 13 11:00 AM
FBI 3 33
EXECUTIVE SECRETARY

**BELLSOUTH'S RESPONSE TO THE DATA COALITION'S
COMMENTS OF NOVEMBER 1, 2000**

BellSouth Telecommunications, Inc. ("BellSouth") submits this response to the Data Coalition's Response to BellSouth's Objections to Covad's Second Interrogatories and Second Request for Production of Documents.¹ BellSouth's objections should be sustained because they are well-founded and conform precisely to the discovery orders and rules established by the Authority. The discovery issue raised by the Data Coalition (apparently on behalf of Covad) is straightforward: may Covad exceed the number of data requests permitted by the Authority and ignore the procedural schedule established by the Pre-Hearing Officer? The answer to these questions should be "No," particularly in light of the utter failure by Covad to show good cause for the additional discovery it seeks.

DISCUSSION

On October 4, 2000, Covad served BellSouth with forty-one discovery requests (thirty-four interrogatories and seven requests for production). BellSouth responded to

¹ BellSouth is filing separately objections to Broadslate's discovery requests. In addition to specific objections, BellSouth objected to the entire set of discovery requests because they were submitted on October 31, 2000, well beyond the October 13, 2000, discovery cut-off established by the Pre-Hearing officer. The Order of the Pre-Hearing Officer, Director, H. Lynn Greer, Jr. (dated August 10, 2000) states that "Discovery requests shall be filed with the Authority and served on all parties no later than 4:30 p.m., Friday, October 13, 2000."

those requests on October 16, 2000. Section 1220-1-2.11(5)(a) of the Tennessee Rules of Procedure limits discovery requests to forty, absent a showing of good cause. This rule is based on a sound policy, in effect in many federal courts, which requires advocates to use discovery, not as a blunt instrument, but as a tool of precision with a goal of efficient dispute resolution. The Authority has adopted these rules of procedure for use in contested matters pending before it. Therefore, Covad is plainly not entitled to the additional discovery it seeks through the second set of discovery requests submitted on October 13, 2000, which consisted of sixty-three additional requests (fifty-two interrogatories and eleven requests for production). Significantly, when it submitted the additional discovery, Covad made no attempt to show good cause for exceeding the Authority's limit on discovery requests. It was not until BellSouth submitted its objections that Covad, through the Data Coalition, has attempted to justify its additional requests.

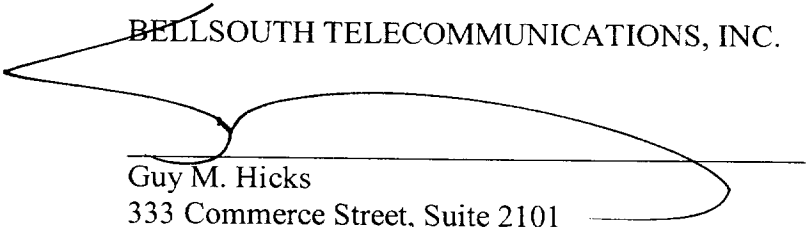
In its filing, the Data Coalition offers no legitimate basis for the additional discovery other than (1) a statement concerning the "critical" nature of the information it seeks (Response, p. 5), (2) a statement that "BellSouth is the only party with the information requested" (Response, p. 5), and (3) a claim that the members of the Data Coalition were guilty of a "clerical oversight" due to the "pressure of meeting the procedural schedule" (Response, p. 6). Interestingly, the Data Coalition does not disclose in its filing BellSouth's agreement with Covad that discovery responses provided by BellSouth in similar generic cost proceedings in the region are available for use in this matter. In the generic cost proceedings in Florida, Louisiana, and North Carolina, BellSouth has provided responses to 1,053 discovery requests this year (FL – 840; LA –

31; NC – 131). Thus, Covad and the members of the Data Coalition have the benefit of nearly 1,100 discovery responses from BellSouth when the earlier Covad requests and Sprint requests are taken into account.

Aside from the fact that they have made no serious effort to show good cause for the additional requests, the Data Coalition show little regard for the procedural rules which govern this matter. Rather than present specific reasons why each of the additional requests should be permitted, the Data Coalition asks the Authority simply to pretend that some party other than Covad submitted the second set. That is, they attempt to shift the focus away from the real issue (how many discovery responses in excess of 1,100 do they need to try this case?) and direct the Authority's attention to supposed clerical errors and other non-substantive issues. The Authority should not be distracted. BellSouth's objections should be sustained.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 6, 2000, a copy of the foregoing document was served on the parties of record, via the method indicated:

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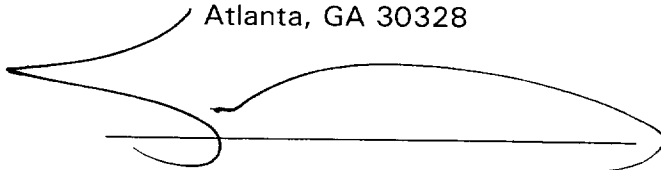
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A large, stylized handwritten signature in black ink, appearing to be a cursive representation of a name, possibly "Catherine F. Boone".